IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13/12/2002

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THE HONOURABLE MR. JUSTICE P.K. MISRA

W.P.NO.7887 OF 2001
AND
W.M.P.NO.18102 OF 1999

Dr.P. Radhakrishnan .. Petitioner

-Vs-

1. Madras Institute of
Development Studies,
Rep. by its Chairman,
79, Second Main Road,
Gandhi Nagar, Adyar,
Chennai 20.

2. Prof.V.K. Natraj,
Director,
Madras Institute of
Development Studies,
79, Second Main Road,
Gandhi Nagar, Adyar,
Chennai 20. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr. Vijay Narayan &
Mr. Parthiban

For Respondents : Mr.K. Chandru for
Mr.R. Yashod Vardhan

:J U D G M E N T

The facts giving rise to the present writ petition are as follows :-
Petitioner is presently working as a Professor in the first respondent Institute which had been founded in 1971 by Dr. Malcom S. Adiseshiah and his wife to undertake studies and research pertaining to development problems with special reference to agro-rural aspects of Tamil Nadu and the problems of the economically and socially backward sections throughout the country. In 1977, the Institute was reconstituted as a National Institute jointly sponsored by

the Indian Council of Social Science Research, New Delhi and the Government of Tamil Nadu. One Dr. Paul P. Appasamy was appointed as Director of the Institute on 1.11.1997. However, he tendered his resignation which was accepted and it was decided to appoint a new Director. At that stage, the existing professors in the Institute, including the present petitioner, expressed their disinclination to become Director and accordingly a Search Committee was constituted and the petitioner was one of the members of the said Search Committee. The Search Committee recommended that the present respondent No.2 be offered the post of Pro Tem Director for a period of 2 years and the search for appointment of a regular Director may be resumed after assumption of the office by the new Director. The report of the Search Committee was placed before the Governing Council which however took the view that the present respondent No.2 may be appointed as Director for a regular term of 5 years instead of 2 years as suggested by the Search Committee. Accordingly a resolution was passed and the respondent No.2 assumed the charge of Director of the Institute. The petitioner has prayed for quashing item No.2 of the resolution dated 23.12.1999 so far as it relates to appointment of the second respondent as Director for a period of 5 years and consequently direct to restrict the term for a period of 2 years instead of 5 years.

2. A counter affidavit has been filed justifying the appointment of the respondent No.2 for a period of 5 years. Besides, the question of maintainability of the writ petition at the instance of the petitioner, who had declined to become the Director, has been raised. It is also stated that the first respondent Institute being a Trust, petition is not amenable to the writ jurisdiction of the High Court under Article 226 of the Constitution of India.

3. Learned counsel for the petitioner placed reliance upon Rule 5 of Section V of the Service Rules applicable to the Institution and contended that the age of retirement being 60, a person beyond the age of 60 could be appointed for a period of 2 years at a time and accordingly the respondent No.2 could not have been appointed for a period of 5 years. The relevant provision as contained in Rule 5 of the Service Rules of the Institute is extracted hereunder:

" 5. Retirement :-

a) The age of retirement of the members of the academic administrative and other staff in permanent whole-time service shall be the completion of the age of 60. Academic staff may be given superannuation contracts upto the age of 65 with each contract not exceeding 2 years. . ."

Clause 7 of the Amended Deed of Trust being relevant, is extracted hereunder :

" 7. Director

(1) The Governing Council may appoint one of the Professors/Senior Fellows of the Institute or someone who is considered eligible to be Professor/Senior Fellow of the Institute as its Director for a period of Five Years. Such appointment may not ordinarily exceed a second term of Five Years. The search process for the successor should commence two years before the end of the tenure of the Director.

(2) The Director shall get such emolments and facilities as the

Governing Council may decide from time to time.
(3) The Director shall be the Chief Executive Officer of the Institute. His powers and duties shall be prescribed by the Governing Council under Rules and Regulations."

4. It is the contention of the petitioner that even though as per Clause 7 of the Trust Deed a Director can be appointed for a period of 5 years, such appointment cannot be contrary to the provisions contained in Rule 5 of the Service Rules which stipulate that the age of retirement is 60 and a person can be allowed to continue on contract basis thereafter upto the age of 65 years with each contract not exceeding 2 years and therefore, he has submitted that if a person age of 60 is to be offered the post of Director, such appointment can be only for a period of 2 years at a time and not for a period of 5 years.

5. Even though the aforesaid submission may appear to be prima facie attractive, on closer scrutiny I am unable to accept such a contention. It is seen from Clause 7 of the Deed, which is a specific provision relating to Director, that a Director is to be appointed for a periiod of 5 years. It is also indicated in Clause 7 that such appointment may not exceed a second term of 5 years. It further makes it clear that search process for the successor should commence two years before the end of the tenure of the Director. If the contention of the petitioner would be accepted and the person would be appointed for a period of 2 years, the Institute would be required to be on the lookout for another Director simultaneously with the appointment of a Director for a period of 2 years as Clause 7 itself contemplates that search process for the successor should commence before the end of two years of the tenure of the Director. It is no doubt true that Rule 5 contemplates the age of retirement at 60 and extension can be upto the age of 65 with each contract not exceeding two years. However, such general provision has to give way to the specific provision contained in Clause 7 of the Amended Trust Deed.6. The specific provision relating to Director as a later clause is required to be considered and followed so far as the appointment of Director is concerned and the general provisions contained in the earlier Rule relating to appointment will not be applicable to the appointment of Director, which is specifically governed under Clause 7 of the amended Trust Deed.
7. Learned counsel for the petitioner has also contended that since the search committee had recommended that the Director should be appointed for a period of two years, while accepting the recommendation of the search committee, the Governing Council should not have deviated from the recommendation by recommending appointment for a period of 5 years. This submission is without any basis as it is not disputed that it is the Governing Council which is to take a decision in the matter and the report of the Search Committee is merely a recommendatory in nature.

8. Since I am not inclined to accept the basic submission raised by the learned counsel for the petitioner, the writ petition is liable to be dismissed. In such view of the matter, the question regarding maintainability of the writ petition is not necessary to be decided.
The writ petition is accordingly dismissed. However, there would be

no order as to costs. consequently, W.M.P.NO.18102 of 1999 is closed.

Index : Yes
Internet : Yeso
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To

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